

DIVISION III

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
ROBERT J. GLADWIN, Judge

CA06-300

JANUARY 17, 2007

MANUEL BAIL BONDS  
APPELLANT

APPEAL FROM THE CRAWFORD  
COUNTY CIRCUIT COURT  
[NO. CR-2003-370-B]

V.

HON. MIKE MEDLOCK,  
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Manuel Bail Bonds appeals the circuit court's entry of a \$15,000 bond-forfeiture judgment against it and in favor of appellee, the State of Arkansas. On appeal, appellant argues that the circuit court erred in finding that it lacked a good excuse for the failure of the defendant to appear and in entering a forfeiture. We affirm.

Appellant posted a \$50,000 bond for the release of someone claiming to be Iris Martinez, who was arrested for possession of methamphetamine with intent to deliver and possession of drug paraphernalia in Crawford County, Arkansas, on August 22, 2003. The individual apparently used this false identification and other information to induce appellant to secure her release. The defendant subsequently failed to appear for her scheduled court

date on June 15, 2004, and on June 16, 2004, the circuit court issued a warrant for the defendant's arrest for her failure to appear. On September 29, 2004, the circuit court issued a summons on appellant directing it to answer within twenty days for the defendant's failure to appear and ordering appellant to appear on October 12, 2004, to show cause why the bond should not be forfeited.

When appellant began the search for the defendant, it was discovered that the real Iris Martinez lived in Arizona, and she had been the victim of identity theft. The information was reported to the circuit court, which instructed appellant's counsel to have the sheriff run the fingerprints of the missing defendant to determine if she had been known by another name in order to assist appellant in locating and apprehending her. The sheriff reported that he did not have any fingerprints on file, as none had been taken during the arrest procedures, and that he could not identify the person that had been arrested.

After several continuances, the bond-forfeiture hearing was held on November 22, 2005, at which time appellant claimed that the real Iris Martinez had been contacted in Arizona and that there was proof that she was not the person who had bonded out of the Crawford County jail on the charges in question. Appellant argued that because law enforcement officials had not taken fingerprints of the defendant, it was impossible for appellant to determine who to seize and that, accordingly, appellant should not be held liable for the forfeiture. The circuit court rejected the argument, finding that it was the responsibility of the surety to bring to court the individual that they had bonded out of jail.

A forfeiture judgment was entered on December 6, 2005, regarding the bond in an agreed upon amount of \$15,000, and appellant filed a notice of appeal from the judgment on January 4, 2006.

In *Bryce Bail Bonds, Inc. v. State*, 8 Ark. App. 85, 648 S.W.2d 832 (1983), this court stated that a “surety is not released from forfeiture except where an act of God, the State, or of a public enemy, or actual duress prevents appearance by the accused at the time fixed in the bond. Absent one of those excuses the failure of an accused to appear at the time fixed is sufficient basis for forfeiture.” *Id.* at 89, 648 S.W.2d at 834. Where a defendant does not appear there is no exoneration from liability under the bond, regardless of the extent of the search by the surety, if the surety shows no more than a disappearance of the principal. *Id.* It devolves upon the bail bondsman to establish facts which justify favorable action in the exercise of the circuit court’s discretion to remit a forfeiture. *Id.*

Appellant points out that Arkansas Code Annotated section 16-84-207(b)(3) states that when a defendant fails to appear for a scheduled court date, the appropriate law enforcement agencies shall make every reasonable effort to apprehend the defendant. Related to the requirements for fingerprinting arrestees, Arkansas Code Annotated section 12-12-1006(a) states that, “immediately following an arrest, the arresting official shall take, or cause to be taken, the fingerprints and a photograph of the arrested person if the offense is a felony or a Class A misdemeanor.”

Appellant argues that the dicta from *Hot Springs Bail Bond v. State*, 90 Ark. App. 370, \_\_\_ S.W.3d \_\_\_ (2005), should apply in this case. The surety has shown cause why the bail bond should not be forfeited, i.e., it has no idea who or where the defendant is, the information she gave it was completely false, and the sheriff has no fingerprint evidence from which it can track down her true identity and location. Appellant maintains that the circuit court should have exonerated the entire bond because there was a failure of any reasonable effort by the appropriate law enforcement agency to take steps to apprehend the defendant or ensure that it can be determined who the person is that in fact needs to be apprehended. Appellant argues that the arresting agency failed to follow the law regarding taking the defendant's fingerprints, and appellant alleges that it is error to hold appellant responsible for now being unable to determine the identity of the person to seize and return to court. Appellant contends that the evidence shows the surety took appropriate steps to determine the identity of the defendant, and that it should not be required to pay the bond due to the fault of the sheriff's office. Appellant also argues that the circuit court's failure to consider the impossibility of appellant's situation in this matter was in error and asks that the ruling be reversed and the forfeiture dismissed.

The basic premise to be followed in this type of case is that "[o]nce the defendant has failed to appear, the entire amount of the bond is subject to forfeiture. The surety is given the opportunity to present evidence why the bond should not be forfeited, or why the full amount of the bond should not be forfeited . . . ." *Bob Cole Bonding v. State*, 340 Ark. 641, 644, 13

S.W.3d 147, 149 (2000). The essence of a show-cause hearing is that the summoned bonding company should offer proof or argument as to why the bail bond should not be forfeited. *Id.* In the instant case, the State maintains that appellant failed to present the circuit court with evidence to meet its burden of proof in showing good cause by proving that the State wholly prevented the defendant's appearance in court.

Although an act of the State that prevents the appearance of a defendant can release a surety from forfeiture, *see Liberty Bonding Co. v. State*, 270 Ark. 434, 604 S.W.2d 956 (1980), appellant failed to show that the State prevented appellant from assuring that the defendant appeared within 120 days after appellant received the summons. Even if the failure to fingerprint the defendant were deemed to violate Arkansas Code Annotated section 12-12-1006(a), which is a criminal-history reporting standard, appellant failed to cite any authority for the proposition that the remedy for such a violation would be a reversal of the forfeiture.

In *AAA Bail Bond Co. v. State*, 55 Ark. App 35, 929 S.W.2d 723 (1996), this court held that a surety bears the primary responsibility for assuring the appearance of the defendant. In that case, it was determined that because the surety failed to show that it had exercised the effort required to return or attempt to affect the return of the defendant to custody, the forfeiture must be upheld. *See id.* In the instant case, the record reflects no showing whatsoever by appellant that it exercised any effort to secure the defendant's true identity at the time of the issuance of the bond, kept close track of her pending her court date,

or made certain that she remained in the state. Appellant cannot obtain a reversal of this forfeiture simply by blaming law enforcement. *See Hot Springs Bail Bond, supra* (holding that a failure of a law enforcement agency to make a reasonable effort to apprehend does not necessarily constitute good cause).

Certain defendants and situations require that sureties take extra caution, and “where the charge against the accused is a serious one and a long sentence is probable, the degree of care expected of the bondsman is greater than in the case where the charge is of a less serious nature, where the accused has a good defense to present and if convicted faces punishment of a degree not likely to cause him to flee.” *Bryce Bail Bonds, supra* at 89, 648 S.W.2d at 835. In the instant case, the defendant was charged with offenses that carried the possibility of imprisonment for not less than ten years and not more than forty years, or life. *See Ark. Code Ann. § 5-64-401(a)(1)*. Further, on the bail bond, the defendant listed her address in California. Under such circumstances, appellant is required and expected to exercise a greater degree of care.

While we do not condone the failure of the law enforcement agency to properly follow fingerprinting procedures, we do not abandon the long-standing principle that the primary burden in these cases is on the surety. While this may result in sureties taking additional steps to assure themselves that proper procedures are followed by law enforcement prior to bonding someone out, we decline to shift the responsibility away from the surety.

Affirmed.

PITTMAN, C.J., and ROBBINS, J., agree.